

POLICY REPORT



Regulatory Impact Assessment (2)

- ... Benefits of RIA
- ... Overview on Macedonia's developments regarding RIA introduction and implementation
- ... RIA process in Macedonia, a long way to go...

Analytica's report on Regulatory Impact Assessment aims at giving a clearer picture on the overall RIA process putting particular focus on RIA developments in Macedonia. The report goes through the history of RIA, its introduction booming all around the world and concentrates predominantly on RIA introduction and implementation challenges that Macedonia's authorities are facing with. It emphasizes that Macedonia's authorities, although belatedly, are more and more becoming aware of RIA's role and importance in preparing solid legal framework...

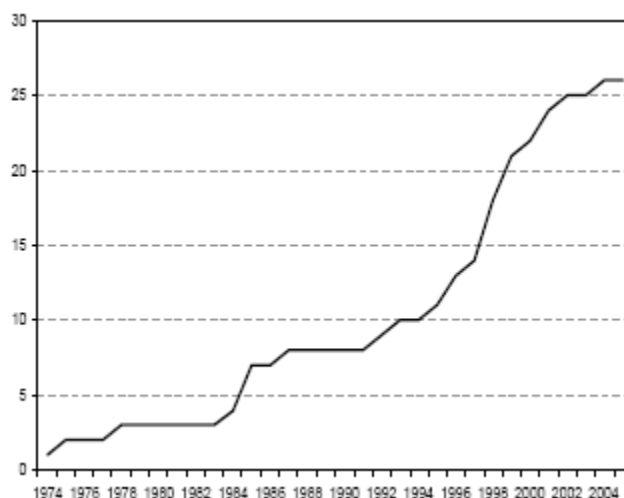
Introduction

In this day and age, when governments are faced with a huge quantity of regulation, it is beyond question that regulation should imperatively be given special treatment and consideration. The role of political actors should consist of making sure that the regulation in place meets the criteria of an effective and efficient regulation, and guarantee that it produces a positive impact on concerned parties or more broadly – on citizens. In other words, mechanisms for anticipating policy impacts, such as Regulatory Impact assessment (RIA), must be put in practice.

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The world's more developed countries (OECD countries, US, Australia), have been regularly applying RIA to new and existing policies for decades. Since 1974, when it was first introduced, RIA has consistently recorded indisputable popularity, becoming a constituent element in the policy-making processes of the countries mentioned above. In addition, although there is no blueprint for successful RIA introduction, these countries' experience has effectively served as practical guide for less developed countries for successful RIA introduction and implementation. Hence, it can be easily concluded that RIA's impact on improving public policy has never been as high as it is at present.

RIA's raising popularity in the period 1974 - 2005 in OECD Countries¹



After expressing RIA's importance, proceeding with a broader RIA definition is the next logical step. Firstly, RIA is primarily perceived as an instrument used by policy makers with the intention of predicting and assessing impacts of either existing or proposed policies, over social, economic and environmental aspects. Secondly, RIA is a regulatory systematic activity and cannot be considered a substitute for the policy making process, rather it must

¹OECD (2007d), Indicators of Regulatory Management Systems, OECD Working Papers on Public Governance, 2007/4, OECD.

be fully integrated within the process and contribute positively to the policy-related debate. This can be achieved with the help of the public consultation component, which is integrated in RIA, enabling stakeholders to play an active role in the entire policy making process. Finally, it is important to mention that RIA's scope, shape, content and role vary depending upon the specifics for each country, therefore it is required that RIA is applied on a case by case basis.

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RIA introduction and especially full implementation require the necessary political will and genuine efforts. However, it is important to mention that even in less developed countries there is some political will to introduce RIA, even though it may only be superficial. Thus, there is hardly any country that is not aware of RIA's importance and its benefits. The latter has been achieved with the help of international organizations and companies that implement RIA related projects all around the world. Due to the complexity of the RIA process and the lack of skilled and experienced national human capital in many countries, especially in less developed ones, pilot projects offered from such organizations are essential.

As mentioned above, the importance of the stakeholders' consultation process (business community, civil society), should not in any case be underestimated during RIA implementation. Enabling a large range of stakeholders to be directly and actively involved in the consultation process offers them the opportunity to express and share their ideas and experiences on how to make policies efficient and productive stakeholder-wise. Besides this, stakeholders should as well be positioned to initiate RIA for existing policies as well as prospective ones.

However, RIA implementation is a complex process and therefore countries that are determined to introduce it face several challenges. Lack of staff with proper skills for RIA implementation; low awareness within public institutions and civil society about RIA; and a certain level of opposition or skepticism by the political elites for the introduction of RIA

are only some of the many challenges that countries face during RIA introduction. Logically, these challenges are even more pronounced in developing countries.

Based on RIA best-practice cases to-date, despite slight variations, there is a standardized structure and series of steps to be undertaken when introducing RIA. In sum, the structure and procedure of RIA introduction is as follows:

- Identification of a certain problem to be regulated by a policy;
- Identifying regulatory options; detailed assessment of costs, benefits and other impacts;
- Consultations with wide range stakeholders;
- Policy design along with monitoring mechanisms.²

Benefits of RIA

RIA is defined as a policy tool that is used to make policies effective and efficient by providing affected stakeholders by default with high quality regulation. Thus, based on this definition, one can easily derive benefits and advantages arising from the introduction and proper implementation of RIA. In brief, RIA's strongest points consist of:

- Reviewing regulatory options and choosing the most appropriate ones for society as a whole;
- Providing clear evidence on the effects the policy is to produce;
- Engaging the wide public into consultations with the aim of improving transparency and openness;
- Direct implication in improving government accountability.

Furthermore, RIA produces significant benefits in national economic growth (by identifying all administrative and regulatory burdens that are seen as obstacles of economic prosperity), in the quality and transparency of governance, boosting efficiency and effectiveness of the overall public service. The economic impacts mainly include the functioning of the internal trade and competitiveness, investments, administrative burden over the business community, fiscal implications on the public administration, research and innovation, and the macroeconomic surrounding.

² OECD guidelines on successful RIA introduction

Social impacts, on the other hand, include the following: employment; standards and rights related to the work force, social inclusion and protection of special groups, gender equality, equal treatment and opportunities, indiscrimination, public health and security, culture...³

Overview on Macedonia's developments regarding RIA introduction and implementation

Macedonia's authorities, although belatedly, are becoming aware of RIA's role and importance in preparing solid legal framework. The so called "regulatory inflation"⁴, inefficiency of the regulation and the continuous recommendations from international organizations are without a doubt the highlighting factors that led to this long awaited change. In addition, it is important to mention that RIA is becoming increasingly incorporated into the political discourse of politicians, a fact that clearly shows the ever raising popularity of this term in the country.

RIA in Macedonia is part of the broader regulatory reform undertaken in 2006. The reform, still in progress, is undertaken in two phases. Regulatory Guillotine takes place in the first phase, while RIA occurs in the second phase. To be more concrete, RIA is part of the project Building Administrative Capacities for EU Integration, Fund for Global Opportunities – United Europe (GOFRE) implemented in cooperation with the Government.⁵ Along with Strategic Planning, it falls under the first component Public Administration Reform as Support for Accession Process to the EU.⁶ It is important to mention that the UK embassy in Skopje has placed significant focus on helping Macedonian authorities with RIA introduction and implementation. Namely, the UK ambassador in Macedonia and the Vice Premier for Economic Affairs Vladimir Pesevski, promoted a new manual for RIA that will assist improved regulation in Macedonia.⁷

³ RIA Manual, Government of the Republic of Macedonia, Skopje, 2009.

⁴ A term used by OECD for countries facing enormous amount of policies.

⁵ <http://sep.gov.mk/Default.aspx?ContentID=75> retrieved on 2nd of October, 2009.

⁶ <http://sep.gov.mk/Default.aspx?ContentID=138> retrieved on 2nd of October, 2009.

⁷ <http://ukinmacedonia.fco.gov.uk/en/newsroom/?view=News&id=20938520> retrieved on 27th of October, 2009.

RIA in Macedonia has already become mainstreamed in the policy making process. This is due to the fact that starting in January 2009; all ministries are obliged to undertake RIA during the process of proposing new laws. Along with the proposal they are obliged to attach a fiscal impact assessment and an assessment of the harmonization of national legislation with EU directives. It is further emphasized that involvement of all stakeholders affected by policies will provide additional information needed for defining new regulations.

The legal frame for RIA was approved in February and March 2008, through the Rules of Procedure for amendments and changes in the Rules of Procedure for Operation of the Government of the Republic of Macedonia; RIA Methodology; and Decision for the form and contents of RIA templates.⁸ According to the standardized RIA template in Macedonia, the following impacts are taken into consideration:

- Impact over national competitiveness;
- Impact over socially marginalized groups;
- Impact over gender issues and equity;
- Impact over environment;
- Impact over market economy principles;
- Impact over citizens' rights.⁹

The RIA Methodology in Macedonia foresees RIA implementation based on the following methodology:

- Preliminary RIA: is implemented for the purpose of determining the problem to be regulated by the policy, for identifying objectives and available options for the achieving of aimed results, detailed description of impacts for each proposed option, the method for selecting the preferred option, and evaluation of the possibility for implementation of the rule "silence is consent". For every identified option, all expenses, benefits, risks and impacts over the economy, environment and the whole society are ascertained. This type of RIA is implemented for every policy proposal except for laws that need to be approved through urgent procedure. The main role in implementing preliminary RIA belongs to the ministries. For a successful preliminary RIA preparation a strong and an effective coordination among the ministry proposing the policy, the General Secretary, and the stakeholders is crucial.

⁸ National Program for the Adoption of the Acquis - 2009 review -

⁹ RIA template

Expanded RIA: is a more detailed methodology implemented only for significant proposals and includes the following assessments: Economic Impact Assessment; Social Impact Assessment; and Environmental Impact Assessment. Factors such as: competition, market openness, employment, productivity, innovation, and investment as well the number of people affected by the proposed regulation play a fundamental role in deciding whether for certain policies expanded RIA is going to be implemented.¹⁰ As in the case of preliminary RIA, expanded RIA is as well prepared for every policy proposal except for laws that need to be approved through urgent procedure. The aim of the expanded RIA is to get a detailed analysis of potential effects produced by the new policy; to ensure maximized transparency and broad consultations with all stakeholders; and through consultations to ensure a wider insight over the political and ethical aspects from the introduction and implementation of the prospective policy.

Expanded RIA preparation depends on the following criteria:

- Does the proposal cause significant economic, social, as well as environmental impacts?

- Do the proposal's overall implementation expenses exceed the amount of 600 million Macedonian denars?¹¹

The procedure of preparing expanded RIA is similar to preliminary RIA. However, the difference lies on the detailed analysis of regulation, involved resources, the timeframe of the assessment and the ascertainment of the approach based on which the regulation is going to be revised.

RIA implementation for Macedonia's citizens is of unquestionable value. It is likely to produce benefits such as: complete and thorough analysis on real impacts produced by policies; and transparency and consultations (internal among ministries; and external among all stakeholders). The expected positive impact on transparency and consultations is seen as an opportunity to finally terminate the practice of proposing and approving laws "behind the curtains", i.e. without proper consultations with the concerned audience. However, at this stage it is premature to offer any conclusions regarding RIA's impact over transparency and consultations. Time and experience in implementing RIA are needed before a clear assessment can be reached.

However, since the initiation of RIA, the country has faced the standard problems and challenges that usually stand in the way of every country aiming to introduce RIA. The most common challenges are undoubtedly the lack of highly-qualified staff with the necessary

¹⁰ <http://www.oecd.org/dataoecd/12/50/38706266.pdf> retrieved on 24th of September, 2009.

¹¹ RIA Methodology, Official Gazette of the Republic of Macedonia, No: 66, 2009.

skills to implement RIA and the low awareness within public institutions and civil society about RIA. Therefore, in order to ensure the successful introduction and implementation of RIA, it is vital that the process in Macedonia is further implemented in cooperation with international organizations and experts specialized in RIA.

Enhancing institutional capacity for RIA implementation is another issue that requires a great deal of efforts. For that reason, the government chose to establish a special sector named as Sector for Economic Policies and Regulatory Reform which plays the main coordinating role in the process of RIA. It is as widely believed that each ministry will aim to establish a RIA unit. The responsibility of RIA implementation belongs to the Deputy Minister or State Secretary in line ministries, while at least two officials within line ministries will be engaged at operational level. It is important to mention that all officials of this sector have started to undergo various trainings in order to provide them with the necessary skills and knowledge for the successful implementation of RIA.

RIA process in Macedonia, a long way to go...

In lieu of a clearer picture of the current status of RIA in Macedonia, it is easy to present our conclusions. The report went through the history of RIA, its introduction booming all around the world and concentrated predominantly on RIA introduction and implementation in Macedonia.

Based on the report's findings, the pace of RIA developments in Macedonia have exceeded expectations. Since 2006, with the first implementation of RIA, its popularity has been constantly increasing, resulting in its integration into the policy making process.

The overall conclusion is that the RIA process in Macedonia has a long way to go. Despite the fact that significant achievements have been recorded, considerable challenges remain to be overcome. However, a general recommendation for the authorities in Macedonia would be to seriously take into consideration the identified set of best practices in OECD countries¹², which are briefly presented below:

- Maximizing political support and commitment to RIA: Raising the issue of RIA implementation to the highest political level is a crucial prerequisite for successful implementation of RIA. This has to do with ensuring that the authorities do not show any resistance and opposition toward RIA implementation. Legal provisions for obliging ministries to prepare RIA for all proposed laws are a solid foundation for successful encompassment of RIA implementation process. Available mechanisms have to be put in place in order to raise RIA awareness in all ministries. Thus, they will fully understand RIA's importance and show readiness to prepare RIA without any resistance.
- Allocation of responsibilities for RIA program elements carefully: The regulators should appoint the institution which is going to have the leading role in the process of undertaking RIA. Depending on the policy nature and specifics, there may either be a single or more subjects involved. However, the latter would require setting up an effective coordinating system in order to achieve effective implementation of the policy.
- Trainings and capacity-building for the RIA implementing team: As it was previously mentioned, the lack of highly-qualified staff with the necessary skills to implement RIA is a strong challenge for the authorities in Macedonia. However, involvement of international experts in RIA implementation deserves special appraisal. On one hand, it clearly shows that the government is determined and is

¹² OECD (1997), Regulatory Impact Analysis: Best Practice in OECD Countries, Paris

willing to undertake the process properly, and on the other, it indirectly confesses that the government does not possess the necessary capacity, on its own, to successfully conclude the RIA story. The trainings organized for the professionalization of the team in charge of RIA implementation (Sector for Economic Policy and Regulatory Reform), are a significant positive step but further professionalization must still be at the forefront of the process.

- **Introducing successful data collection strategies:** Collecting data is sometimes a very complex process. This is even more emphasized in countries where institutions are not transparent and open for the citizens. The forecast of the likely effects that the policy is going to have on the various aspects of the society will be very much dependent on the access level to legitimate and reliable data. Lack of reliable data will certainly cause confusion in the overall implementation process of RIA.
- **Targeting RIA efforts:** Policy makers should identify the proposals that are expected to have the largest impact on society. Based on such evidence, an appropriate targeting and prioritization of RIA efforts should be made.
- **Integrating RIA within the policy-making process at the earliest possible stage:** One of the main principles of successful RIA implementation is integrating the RIA process in the entire policy making process. In addition, it is permanently underlined that considering RIA as a substitute of the policy-making process is a fatal mistake.
- **Communication of the results in order to facilitate the inclusion of the public in the policy-making process:** Establishing communication mechanisms that will keep all interested parties informed about the effects of different policy options certainly helps in boosting support and understanding for the policy.
- **Involvement of the stakeholders and the wider public extensively:** The issue of preventing the audience in Macedonia to participate actively in the entire policy making process is an issue being addressed a lot lately. Therefore, it is more than evident that transparency and public consultation are issues requiring immediate improvement. Ad hoc public debates before laws are approved have to be replaced with regular ones, at the same time ensuring that a wider range of stakeholders is involved.
- **Applying RIA to new as well as to existing regulation:** The general perception of the authorities in Macedonia is that RIA is an instrument that should be applied strictly to new regulation. Additionally, the Methodology for RIA in Macedonia does not specify whether RIA is applicable to old regulation. Thus, if this benchmark is to

be taken seriously into consideration integrating such a statement within the Methodology should be an immediate priority.



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Public Policy Analysis and Administration Program

“Regulatory Impact Assessment (2)”

Agim Selami, Research Fellow of the Program

aselami@analyticamk.org

Contact

Adress:

Dame Gruev

No: 7-8/3

1000 Skopje, Macedonia

Tel: 00389 (0)2 3121 948

Fax: 00389 (0)2 3121 948

E-mail: info@analyticamk.org